

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

OPTUM, INC. and
OPTUM SERVICES, INC.,

Plaintiffs,

v.

DAVID WILLIAM SMITH,

Defendant.

Civil Action No.: 19-cv-10101

**OPTUM, INC. AND OPTUM SERVICES, INC.’S UNOPPOSED MOTION FOR LEAVE
TO FILE REPLY IN SUPPORT OF THEIR MOTION FOR AN INJUNCTION
PENDING APPEAL AND/OR AN INDICATIVE RULING ON THE PENDING
MOTION FOR A TEMPORARY RESTRAINING ORDER**

Pursuant to LR 7.1(b)(3), Plaintiffs Optum, Inc. and Optum Services, Inc. (together, “Plaintiffs” or “Optum”), respectfully move for leave to file a reply to Defendant David William Smith’s Opposition (Dkt. # 63, “Defendant’s Opposition”) to Plaintiffs’ Motion for an Injunction Pending Appeal and/or an Indicative Ruling on the Pending Motion for a Temporary Restraining Order (Dkt. # 57, the “Motion”). Optum’s Reply supports its previously-filed Memorandum of Law in Support of the Motion (Dkt. # 62). As grounds for this Motion, Optum submits its proposed Reply as an attachment hereto and states the following:

1. As a threshold matter, Smith does not dispute that this Court has jurisdiction to enter an injunction pending appeal, and the Reply provides a roadmap explaining how an injunction pending appeal is both available and appropriate in these circumstances.
2. Further, Defendant’s Opposition illustrates vividly why an injunction is necessary to prevent irreparable harm pending appeal, given his admission that he remains working for ABC, and why this Court should consider the status quo *ante* to protect Optum from further harm. Optum’s Reply will assist this Court’s evaluation of the parties’ arguments in this regard.

3. No party will be prejudiced by the allowance of this motion. Defendant does not object to the granting of leave to file Plaintiffs' Reply.

WHEREFORE, Plaintiffs respectfully request that the Court permit them to file the proposed Reply attached hereto.

Respectfully submitted,

OPTUM, INC. and
OPTUM SERVICES, INC.,

By their attorneys,

/s/ Russell Beck

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Dated: February 8, 2019

CERTIFICATE OF SERVICE

I hereby certify that this document has been filed through the CM/ECF system on February 8, 2019, and will be served electronically to the registered participants as identified on the Notice of Electronic Filing through the Court's transmission facilities, and that non-registered participants have been served this day by mail.

/s/ Russell Beck

LOCAL RULE 7.1(a)(2) CERTIFICATE

I certify, pursuant to Local Rule 7.1(a)(2), that counsel for Plaintiffs have conferred with counsel for Defendant regarding Plaintiffs' Motion for Leave to File a Reply, and have attempted in good faith to resolve or narrow the issues. Plaintiffs understand that Defendant does not oppose the relief requested by this motion based on Plaintiffs' position that it would not oppose Smith's request to file a surreply, if he chooses to do so.

/s/ Stephen D. Riden

Stephen D. Riden